



# COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0110

## United States Copyright Claims Board

Eckart Klobe

CLAIMANT

*v.*

Pectushealing

RESPONDENT

### SECOND ORDER TO AMEND NONCOMPLIANT CLAIM

The Copyright Claims Board finds that your claim, as amended, still does not comply with the requirements of the CASE Act and related regulations. The claim cannot move forward unless it is properly amended.

If you wish to proceed with this claim, you must file a second amended claim by **December 8, 2022**. If you do not, the Board must dismiss your claim without prejudice, although you may file again in the future before the Board or in federal court. There is no additional filing fee for a second amended claim. If you amend your claim and it is found compliant, you will be notified and directed to proceed with service. However, if your second amended claim also is found not to comply, the Board will dismiss the proceeding without prejudice. 17 U.S.C. § 1506(f)(1)(B), [37 C.F.R. § 224.1\(d\)](#).

To make your second amended claim compliant, you must resolve the issues identified below. [37 C.F.R. § 224.1\(c\)\(2\)](#). You may also choose to correct or edit any errors or other information in your amended claim before you file a second amended claim. You do not need to provide a legal argument in your claim – just a statement of facts and circumstances. Being specific in your description gives the other party and the Board more information about your claim. There is no character limit so please be as detailed as possible.

#### Copyright Infringement – Permissible Claim

The Board is only authorized to resolve certain types of copyright disputes. Three particular kinds of claims are permitted:

1. claims of copyright infringement;
2. claims seeking a declaration that activity is not infringement; and
3. claims about misrepresentations in connection with a takedown notice or counter-notice under the Digital Millennium Copyright Act.

17 U.S.C. § 1506(c)(1)-(3). In your amended claim, you checked the box stating your claim is one of copyright infringement. However, you have included the publication number and certificate for a United States Patent Application, not for a copyright registration; And in the “Describe the infringement” section of your amended claim, you allege that the respondent “sells my patented medical device without my consent, misleading people about treatment, and endangering the health of patients.” The Board cannot hear patent claims. 17 U.S.C. § 1506(d)(1). You should only file a second amended claim if you can state facts to support a copyright claim under United States copyright law that can be heard by the Board.

Please review [Circular 1: Copyright Basics](#) and the [Introduction](#) chapter in the CCB Handbook for more information about copyright and the kinds of disputes that the Board can hear.

#### Copyright Infringement – Registration

The Board can only hear a copyright infringement claim if, before the claim was filed, (1) the U.S. Copyright Office issued a registration certificate for the copyrighted work or (2) the legal or beneficial owner of the copyright applied to register the copyright by delivering a completed application, deposit, and fee to the Copyright Office, and the Copyright Office has not refused the application. 17 U.S.C. § 1505(a).

As noted above, your amended claim includes the publication number (“US20050119700A1”) and certificate for a United States Patent Application. It also includes what appears to be a document from the German Patent and Trade Mark Office. You have not included a United States copyright registration number or a Copyright Office service request number identifying a pending application. If you file an amended claim, please provide the Copyright Office registration number for the work or the service request number for the application to register the work with the Copyright Office. Either the registration must have been issued or the application must have been delivered to the Copyright Office before you filed your claim on August 23, 2022.

If your work was neither registered nor subject to a pending application at that time, this claim cannot be successfully amended and cannot proceed. Instead, you would need to apply to register the copyright for the allegedly infringed work before you could refile your claim as a new claim. For more information on registration, please refer to the Copyright Office [Registration Portal](#).

#### Copyright Infringement – Elements

Your claim must make enough factual allegations to support each “element” of the claim. The elements of a copyright infringement claim are:

1. You own a valid copyright in the work, or have been given an exclusive license to the copyright rights at issue in the work,
2. The respondent used one of your exclusive rights in the work without permission,
3. The respondent had access to your work, meaning a reasonable opportunity to view or hear your work, and
4. The respondent's work is substantially similar to the original elements of expression in your work.

Your claim does not provide enough facts about any of the four elements of copyright infringement. Please provide more details and background regarding each element in your amended claim. More information about the elements required to assert a claim of copyright infringement is available in the [Starting an Infringement Claim](#) chapter of the CCB Handbook.

### Final Amendment

Your amended claim does not resolve the issue raised in the September 29, 2022 noncompliance order. If you file a second amended claim, it must state enough facts in support of the claim alleged. **This is your third and final opportunity to submit a compliant claim in this proceeding. If you raise any claims that your allegations do not support, the entire proceeding will be dismissed.** 17 U.S.C. § 1506(f)(1)(B).

To submit a second amended claim, log into your eCCB account and take the following steps.

1. From your dashboard, click the “**Amend claim**” button and select your docket number from the dropdown list.
2. Your claim will unlock for editing. The information you originally entered will appear in the same order as in your original claim.
3. Make the necessary edits. If your claim included supplementary documents, you must re-upload any documents you wish to include in the amended claim on the “**Documentation**” page. *Please include only documents that are directly related to your claim.*
4. Once you have completed your edits, continue to click through the claim flow until you reach the “**Review**” page. The Review page includes all the information that you have provided in the claim up to this point. Carefully double-check the information on this page. If you have any corrections, you can select “**Edit**” to revise any entries necessary. Each section of information has an “**Edit**” button, which will take you back to that section so you can make changes. After you make changes, you can click “**Save & review**” to return to the Review page. Please review your claim carefully. Once you submit your amended claim, you will be unable to edit the claim while it is in compliance review.
5. Once you have completed your review and any revisions, you must confirm that the information in your claim is accurate and truthful to the best of your knowledge. To complete the declaration, type your full name into the “**Digital signature**” box near the bottom of the “**Review filing**” page and click “**Agree & submit.**”

If you have questions, please contact [asktheboard@ccb.gov](mailto:asktheboard@ccb.gov). Include your docket number in the subject line. The Board is unable to provide legal advice. We can only provide legal information and assistance concerning Board procedures and requirements. You may also refer to the [Compliance Review](#) chapter of the CCB Handbook for more assistance.

Copyright Claims Attorney  
November 8, 2022